

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LTTB LLC,)
)
Plaintiff,)
)
vs.) No. 3:18-cv-00509-RS
)
REDBUBBLE INC.,)
)
Defendant.)
)
)
)

- - - -

VIDEOTAPED

30(b)(6)

DEPOSITION OF ELEKTRA PRINTZ GORSKI

Held at the Offices of Barkley Court Reporters
201 California, San Francisco, California
Thursday, February 28, 2019, 10:13 a.m.

- - - -

REPORTED BY: ELAINA BULDA-JONES, CSR #11720

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1 A. -- I personally -- I personally would
2 consider the ongoing willful nature of this
3 infringement to have begun after receipt of my first
4 legal notice in May 2013.

10:28 5 According to my records, there was one
6 significant first notice of my rights via e-mail to
7 Redbubble, and there were probably two additional
8 notices in that same month in -- on related topics.

9 The first one was about counterfeits I had
10:28 10 seen on the site that were almost exact copies of my
11 now-registered design works, my logos for the brand.
12 And then there were other -- I think there were two
13 or -- two additional e-mails about complaints about
14 Redbubble using my marks in online Google ads. It
10:28 15 was like the ad was coming before the ads for my
16 actual brand at the time.

17 So there were -- in my opinion, there are
18 almost three notices of my rights in one month.

19 Q. Okay.

10:28 20 A. And then because the infringement
21 continued after that, that's when it shifted from
22 trademark infringement to trademark counterfeiting.

23 Q. Okay. So when did you first believe that
24 Redbubble was infringing your trademarks?

10:29 25 A. I first believed it when my -- my first --

1 well, my -- I first believed it in May 2013, because
2 my trademark for Lettuce Turnip The Beet, my
3 wordmark for Classes 16, 18, and 25, registered in
4 March 2013, I had already been doing significant
10:29 5 online enforcement since 2012.

6 And actually, I didn't pull up Redbubble,
7 and I didn't -- wasn't do -- like I was doing it,
8 but I wasn't doing it on a daily basis. Like I had
9 a system, that I don't totally recall, because the
10:29 10 business was explosive, and I was single-handedly
11 printing tens of thousands of -- I don't know,
12 thousands of pieces of goods without a machine,
13 basically, and selling them and shipping them and
14 finishing them and -- and then I was also doing an
10:30 15 enforcement.

16 But after the marks registered in -- well,
17 the mark, the first mark for -- that I described,
18 after that registered in March 2013, I did a
19 significant internet sweep. March, April, May. And
10:30 20 I mean, at that point, the internet was flush. Like
21 when I had looked years earlier, there was nothing.
22 And everything -- it had just exploded, which I
23 already knew because people were telling me.

24 But it was -- I mean, Redbubble, I pulled
10:30 25 up in probably -- I mean, I don't recall the exact

1 to a Starbucks to use the restroom, and they were
2 like, he was just here at the Starbucks too. And
3 then he passed away. And I literally just found
4 recently -- like I still had it in Maryland, the
11:05 5 note I had written to him that he never got, which
6 is kind of nostalgic for me because I love him. So
7 I missed him.

8 But there's a bunch of people where I
9 succeeded. I went to Macy's one night when I knew
11:05 10 this famous DJ, Smith Aronson (phonetic), was going
11 to be there. And I like put it in her hand and then
12 she ended up giving it -- and like wearing it at a
13 bunch of DJ events. And then people in L.A. were
14 like -- she took it to L.A., and then all of these
11:05 15 people in L.A. wanted it.

16 So it's just honestly -- and then she
17 maybe wore it to spin class. And then SoulCycle had
18 just been developed around that year and then all
19 these people at SoulCycle wanted it.

11:06 20 And I'm trying to think of all the
21 other -- there are a lot of -- in Soho you have a
22 ton of celebrities and you -- I'm trying to think.
23 There was a bunch of food people. Because it -- the
24 brand hits multiple demographics. It hits people
11:06 25 interested in food, music -- food and music

1 primarily. And fitness. So it just hits every
2 demographic. So I had so many celebrities that were
3 either in food, music, entertainment, and they'd all
4 love it. I had -- it's -- I can't describe to
11:06 5 you -- like the most interesting thing about selling
6 it in person is hearing from every demographic what
7 they love about it.

8 Q. So you said the primary demographics that
9 it appeals to. And "it" being the Lettuce Turnip
11:06 10 The Beet --

11 A. Brand.

12 Q. -- brand, or works, appeal to food, music,
13 and fitness?

14 A. Those are core demographics. But because
11:07 15 of the double entendre -- I mean, the immediate
16 impression is foodies love it. Vegans, vegetarians,
17 anybody related to food, chefs, the culinary world.
18 Then you have all of the clean eaters, the
19 paleo, the -- this, that, and the other that tie
11:07 20 into the food as well, and they're into fitness.

21 And then, like I said, the music, the
22 choreographers, Madonna, the choreography, the --
23 the performers, the tide of music, turning up the
24 beat and turning up the music, they love it.

11:07 25 But there are also -- I had an elderly guy

1 from Soho who -- I don't know who he was. He could
2 have been famous. He -- people would come back
3 every week and they'd say, I just love this shirt, I
4 wear this all day. And I'm like -- and I was a, you
11:07 5 know, Ph.D. professor, and he was like some
6 literature guy. And he loved it because it tied
7 into literature.

8 And then I had a girl from the Bronx who,
9 low income, she loved it because it tied into music,
11:07 10 and she's a teen. So wide, wide array of
11 demographics.

12 Q. Are you a vegetarian or a vegan?

13 A. I'm not.

14 Q. Okay. Just curious.

11:08 15 A. I have been at times but not now.

16 MR. MASUR: So, let's see, why don't we...

17 (Whereupon, a brief discussion off the
18 record.)

19 MR. MASUR: So let's mark as Exhibit 3 the
11:08 20 complaint in this case. Which I thought was
21 attached. Maybe I'll wait until after a break to do
22 that. Let's -- we'll hold that for now.

23 Q. So can you just explain a little bit more
24 about what you think appealed to the fitness people
11:09 25 about the message of Lettuce Turnip The Beet.

1 A. What appealed to the fitness people. It's
2 hugely popular with the fitness community. In fact,
3 turning up the beat, turning up the music, the fact
4 that the music is integrated, the fact that --
11:09 5 sorry, sorry.

6 Lettuce Turnip The Beet, there's a
7 movement to the words. Beyond the fact that there's
8 a movement to the words, the interesting thing is
9 that for the first -- the first summer I was
11:09 10 describing of 2011, when I was -- started selling
11 it, I had a technical issue. I never really
12 printed -- I started printing it probably straight
13 the first couple samples.

14 And so my point to you is, I printed it
11:10 15 straight on a shirt, but then it would kind of arch.
16 And like I could never -- it just never looked quite
17 straight and I was anal so that's when I decided to
18 kind of turn it and I created my angled logo. So I
19 kind of angled the logo and then it gave it
11:10 20 movement.

21 And then it became even more popular with
22 the fitness community because they're like, trap the
23 beat and the logo's titled and it's angled. And
24 it's like, really, the music is going up. So
11:10 25 literally, just the stylization of the logo, it was

1 super-popular in Soho, as I recall, for like -- the
2 initial logo that took off was more the angle,
3 really is the technical issue of mine because I
4 decided, I can't print it straight and it keeps
11:10 5 bowing like a rainbow when I print it, I'll just
6 purposely tilt it.

7 And then like I said, it took off more
8 with the fitness community because it just had that
9 vibe and like people loved it on -- and the other
11:11 10 thing is, it was summer. It's hot as heck in
11 New York City. I was printing mostly tank tops.
12 And so all of these people were taking it to their
13 gyms. And then it really spread across the fitness
14 community.

11:11 15 And I even had people who wanted to
16 wholesale for me back then to sell at like maybe
17 gyms. I remember there was somebody at the very
18 beginning who wanted -- who -- they were part of
19 some kind of gym franchise and they wanted it and I
11:11 20 just never cut a deal because I was like making --
21 you know, I was just selling so much on the street
22 and I was loving the vibe and I didn't have time to
23 print enough to wholesale. So I didn't go in -- I
24 didn't start distributing.

11:11 25 I was just purposely only selling it

1 myself so that I could control the quality, do
2 quality control, and continue to sell on the street
3 and -- it's hard to describe. There were -- like,
4 again, there were many variables. Like if I had
11:11 5 wanted to do wholesale, I would have to step away
6 from street vending and I would have to focus on
7 that and I just didn't.

8 Q. So you were basically at your capacity?

9 A. Yes. I've almost always been over my
11:12 10 capacity because I was doing the full-time
11 production for the brand. Then I was also doing --
12 at that point, in the early days, I wasn't doing
13 enforcement yet but -- I mean, the business kind of
14 grew, you know, and required more work in more
11:12 15 areas.

16 Q. And the angled and tilted version --

17 A. Uh-huh.

18 Q. -- of the shirts, that started, you said,
19 in the summer of 2011?

11:12 20 A. The photo that I have from -- like photos
21 I look back from the horse show that I referred to
22 that was like my first use in commerce in Maryland,
23 the equestrian show where I sold it, it looks like
24 from the pictures I had that are in the creation of
11:12 25 the brand I had -- I had it tilted and I also had it

1 whether any goods originate from or are affiliated
2 with, sponsored by, licensed by, or endorsed by LTTB
3 by any use of an LTTB mark by Redbubble or by others
4 using the mark on the Redbubble marketplace,
11:54 5 including, but not limited to, the infringing works
6 listing and/or URL, how you became aware" -- excuse
7 me -- looks like we left out a word there -- it
8 should read, "how you became aware of the instance,
9 when the instance occurred, all persons with
11:55 10 original of such instance, and the identity of any
11 documents and things supporting such conclusion."

12 A. Uh-huh.

13 Q. And your response to that starts that LTTB
14 has not been contacted yet by any person expressing
11:55 15 confusion.

16 Is that still the case?

17 A. Yes.

18 Q. Are you aware of any instances of actual
19 confusion that have occurred between any goods sold
11:55 20 on the Redbubble marketplace or any listings for
21 goods on the Redbubble marketplace and LTTB?

22 A. I'm not aware as of today.

23 Q. Okay. So you have no evidence that anyone
24 has actually been confused?

11:56 25 A. Not as of today.

1 Q. Do you have any evidence that purchasers
2 or consumers generally associate Lettuce Turnip The
3 Beet with Lettuce Turnip The Beet LLC or with you?

4 A. Can you please repeat the question?

11:56 5 MR. MASUR: Actually, can you repeat it
6 back. Thanks.

7 (Whereupon, the reporter read the record
8 as follows:

9 "Question: Do you have any evidence that
11:56 10 purchasers or consumers generally associate Lettuce
11 Turnip The Beet with Lettuce Turnip The Beet LLC or
12 with you?")

13 THE WITNESS: Do I have any evidence that
14 they associate with me or the LLC?

11:56 15 There was a certain contingent of people
16 who associate -- who I would say get e-mails who
17 associate me with the brand because I am the founder
18 of the brand. And I mean, in fact, just this week,
19 I got an e-mail from a woman saying, I'm wearing
11:57 20 your shirt now, I bought it from you in Soho, I need
21 to get another one. So she associates the brand
22 with me. She met me on the street. She bought it
23 from me before I left for New York.

24 So, yes, there's a certain contingent who
11:57 25 associate the actual Lettuce Turnip The Beet with me

1 as the founder. I don't know how they
2 distinguish -- I don't -- and then there are other
3 people, nobody associates the brand with the LLC,
4 the legal entity. Well, I -- actually, correction.

11:58 5 I don't know, actually, how people
6 associated -- I haven't done a survey and -- I mean,
7 I became -- you know, I formed the LLC in the fall
8 of 2017. So after that, I changed a lot of the
9 online branding from -- to say Lettuce Turnip The
11:58 10 Beet LLC. So, actually, I don't know. I haven't
11 done a survey. I wouldn't know.

12 BY MR. MASUR:

13 Q. So you said that the e-mail you received
14 from a woman this week you think associates the
11:58 15 brands with you?

16 A. She is one instance of somebody because
17 she purchased it from me face to face.

18 Q. So you think that that says that she
19 associates the brand with you or the piece -- I
11:58 20 assume it's a t-shirt?

21 A. Uh-huh. Yes.

22 Q. Or the t-shirt that she purchased with
23 you?

24 A. That's a good question. I mean, she loves
11:59 25 the brand. She wants another one. She remembers

1 me. It's hard to say. I don't know.

2 Q. But she reached out to you because she
3 purchased a t-shirt?

4 A. From me, for the brand, yes. So she loves
11:59 5 the brand because she has gotten compliments from
6 people, ostensibly. She -- she didn't say. She
7 just -- she wants another one. She doesn't --
8 actually, you know what, she didn't remember me.
9 She didn't remember me as a person.

11:59 10 She just said, I bought one in Soho,
11 something to that degree. You know, I want to buy
12 another one. Do you have it in green? So, yes, she
13 actually didn't even -- she didn't even know she had
14 bought it from me. So, correction. I mean...

11:59 15 But there are a contingent of people who
16 remember me. I would say it's small. People see
17 the brand as independent of me large -- in large
18 part, I would say. I mean, it's only -- yeah.

19 Q. So people see the brand as independent
12:00 20 from you?

21 A. Yes.

22 Q. And you also said people don't connect it
23 with the LLC?

24 A. Well, actually, I don't know. Because I
12:00 25 just -- I haven't done a survey and I only -- I

1 updated the, you know, branding online. It still
2 says, you know, the brand name. But then like if
3 you want to contact the brand, I believe it says
4 LTTB LLC. And it ships from, like all the products
12:00 5 ship from LTTB LLC as the return address, so -- I
6 wouldn't know. I haven't asked people, do you -- I
7 haven't done a survey.

8 Q. Okay. So you have no evidence that -- at
9 this point, that people associate the LTTB brand
12:00 10 with either LTTB LLC or with you personally?

11 MR. FAUCETTE: Objection. Misstates the
12 testimony. Lacks foundation.

13 BY MR. MASUR:

14 Q. You can still answer.

12:01 15 A. I haven't studied it. I don't -- I
16 wouldn't say I don't have evidence because I've
17 never been looking for evidence. I don't -- for
18 this topic.

19 Q. What evidence do you have that --

12:01 20 A. I mean, I wouldn't be -- I'm not asking
21 people, do you associate the brand with me? Do you
22 associate the brand with the LLC? Do you know that
23 the LLC is the legal entity who retains rights to
24 the brand? I don't ask people this.

12:01 25 Q. I understand. I'm saying, sitting here

1 today, you do not have any evidence that consumers
2 or purchasers associate the Lettuce Turnip The Beet
3 brand with either you individually or with the LLC,
4 correct?

12:01 5 MR. FAUCETTE: Objection. Misstates
6 testimony. Lacks foundation.

7 THE WITNESS: I wouldn't know. Like
8 you're asking me, do I have evidence. I don't know
9 if I have evidence. I would have to pore through
12:02 10 e-mails and communications and I would have to
11 ascertain -- I would have to spend more time
12 investigating. Like I wouldn't tell you -- I
13 couldn't tell you immediately.

14 BY MR. MASUR:

12:02 15 Q. Sitting here today, you cannot identify
16 any evidence that consumers or purchasers associate
17 the Lettuce Turnip The Beet brand with either the
18 LLC or with you individually?

19 MR. FAUCETTE: Same objections.

12:02 20 THE WITNESS: I can't answer this. I
21 don't know. I don't recall at this point in time.

22 BY MR. MASUR:

23 Q. So you can't identify it sitting here?
24 I'm not talking about any other time.

12:02 25 A. In this moment in time --

1 Q. Sitting here today.

2 A. -- I couldn't --

3 MR. FAUCETTE: Same objections.

4 THE WITNESS: I can't respond.

12:02 5 BY MR. MASUR:

6 Q. You can't respond or you can't identify
7 any?

8 MR. FAUCETTE: Same objections.

9 THE WITNESS: Well, I can't identify it
12:02 10 without actually going through and looking for
11 evidence. Like I'm not -- yeah.

12 BY MR. MASUR:

13 Q. Okay. Now, you said that you promoted
14 Lettuce Turnip The Beet in part by donating
12:03 15 products?

16 Let me strike that question.

17 You said that you donated Lettuce Turnip
18 The Beet products to various different organizations
19 and individuals, correct?

12:03 20 A. Yes.

21 Q. And you've also given away product with
22 Lettuce Turnip The Beet to either celebrities or
23 intermediaries for celebrities to promote Lettuce
24 Turnip The Beet, correct?

12:03 25 A. Yes.

1 contention that LTTB has been damaged or harmed by
2 any use of the LTTB marks by Redbubble or by others
3 using an LTTB mark on the Redbubble marketplace,
4 including facts supporting any claim that LTTB has
03:36 5 sustained lost sales and profits or damages to its
6 goodwill."

7 Do you see that?

8 A. Yes.

9 Q. And your response, I suppose we could read
03:36 10 it entirely into the record, but -- well, first of
11 all, I should say, you read through your response?

12 A. Let me look through it now.

13 Uh-huh. Yes.

14 Q. Okay. And you stand by that statement?
03:37 15 That's still your belief?

16 A. Yes, it's still my belief.

17 Q. Okay. Now, do you have any evidence
18 supporting this position?

19 A. In the Redbubble case, I mean, in my
03:37 20 response, I say, I attribute, yeah, to the -- I
21 attribute a decline to rampant counterfeiting. So
22 do I have evidence in regards to Redbubble or
23 evidence in regards to on-demand printers? I'm
24 unclear.

03:37 25 Q. We can start with to Redbubble

1 specifically.

2 A. I don't have any direct evidence. It's
3 just -- I mean, I'm not sure -- yeah.

4 Q. Okay. The last sentence of your response
03:38 5 says, "A graph comparing the number of legal notices
6 submitted to the aforementioned sites since 2013
7 would clearly show Redbubble is the biggest repeat
8 offender causing damage to the LTTB brand in the
9 same online market channels where it has existed
03:38 10 since 2011."

11 Do you see that?

12 A. Yes.

13 Q. And the aforementioned sites are Zazzle,
14 CafePress, Society6, Teespring, Spreadshirt,
03:38 15 Skreened, sorry, SunFrog, Custom Ink, and TeePub,
16 correct?

17 A. Yes.

18 Q. I think you testified this morning that
19 you haven't graphed that out, correct?

03:38 20 A. I haven't yet.

21 Q. And you haven't -- well, and you haven't
22 produced in this litigation the legal notices
23 submitted to any site other than Redbubble, correct?

24 A. Correct. I don't recall. Wait, wait,
03:39 25 wait. Legal notices. No.

1 various graphs. They would all point to the same
2 exact thing. That Redbubble is the most egregious
3 on-demand printer in terms of repeat counterfeiting
4 of my marks.

03:43 5 Q. And -- and the data that you would intend
6 to graph there are all data that you have in your
7 possession now, correct?

8 A. Ostensibly. I don't know if you mean in
9 my possession now as in my briefcase now?

03:43 10 Q. No. Available to you.

11 A. Oh, okay. Yeah, assuming my -- assuming
12 I -- I should have, you know, the data has been
13 lost, you know, at some point, like if it was on a
14 drive and it got -- whatever, you know. Yeah, I
03:44 15 think I have it all -- I mean, I don't know.

16 Q. And the data as to the -- as to Redbubble
17 that you would be looking to graph is -- has been
18 produced to Redbubble in this litigation, correct?

19 A. Yes, I think -- yeah, that's -- I mean, I
03:44 20 spent the -- the updated spreadsheet you gave me,
21 which this kept changing in the past 48 hours. I
22 created -- I cross-compared it with every time I've
23 documented things and so -- yeah, I've given you
24 everything.

03:44 25 Q. Okay. As to Redbubble, you've given us

1 everything?

2 A. Yes.

3 Q. But as to the other sites --

4 A. Uh-huh.

03:44 5 Q. -- those data have not been produced,
6 correct?

7 A. No, because it's --

8 Q. "No" is fine.

9 A. No.

03:44 10 Q. That was the question I was asking.

11 You don't seem to like Redbubble much.

12 Sorry. Do you like Redbubble much? We'll make it a
13 question.

14 MR. FAUCETTE: Objection. Vague and
03:45 15 ambiguous.

16 MR. MASUR: Okay.

17 Q. You -- you seem to have some antipathy
18 toward Redbubble. Is that a fair statement?

19 A. It would be a fairer statement to say that
03:45 20 I have been impacted by the ongoing infringement,
21 the loss of my time and resources, and, you know,
22 it's -- it's been now five to six years. I mean,
23 I -- in my recollection, I don't know if there are
24 any other companies -- I mean, you'll notice right
03:45 25 now this is the only litigation I'm running.

1 A. Rampant counterfeiting.

2 Q. I've asked you whether other factors, such
3 as changing fashions and changing tastes or market
4 saturation, namely, that the people who want a

05:12 5 Lettuce Turnip The Beet shirt --

6 A. Oh, okay.

7 Q. -- have a Lettuce Turnip The Beet shirt?

8 A. Okay. Do I feel that that's impacting it?

9 Q. Yes.

05:12 10 A. No. I don't feel that that's -- I'm glad
11 you asked, is there a market saturation,
12 essentially? No, there's no market saturation.

13 I use -- I use the example that I tell
14 friends of mine all the time, including my counsel,
05:12 15 recently, but it's not -- I'm not pointing to him in
16 particular, but I say that -- I use the example that
17 my Lettuce Turnip The Beet kid's shirt that is
18 supremely popular, it still remains -- it's a top
19 seller, and I keep hearing from people indefinitely
05:12 20 it's their favorite gift to give to a one-year-old
21 for their first birthday. They want one every year
22 for their kid.

23 It's not -- the market is not saturated,
24 especially for kids. And because it's an
05:13 25 extremely -- it's because it's a brand that has very

1 safe humor and it's -- there's nothing offensive
2 about it, it will continue to be extremely popular
3 with parents who have kids. So the deal is, it's
4 not the kids that are five years old that are buying
05:13 5 the shirt. It's the parents who want their kids to
6 wear it.

7 So I've seen a decline in, you know, to
8 some degree. I mean, there's -- there's an obvious
9 decline in sales. But certain products just
05:13 10 continue to be supremely popular, and I don't think
11 it's -- there's no saturation, like somebody who
12 has -- I mean, there's a certain portion of people
13 who they have one kid shirt and they don't need
14 another. But there's a large percentage of people,
05:13 15 repeat customers, who keep coming back, who want
16 another kid shirt as the kids grow. I mean, that's
17 the great thing about kids. They keep growing.
18 They need another one, different size.

19 So I would say there's no market
05:14 20 saturation. And I also tell people, if I'm not
21 selling it, somebody else is.

22 Q. So there's no other factor that you think
23 is driving your decline of sales other than --

24 A. The decline of sales I attribute, like I
05:14 25 said, to putting too much emphasis on -- potentially